

AMENDED IN SENATE JUNE 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 551**

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**Introduced by Assembly Member Campos**

February 16, 2011

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An act to amend Section 1775, 1776, and 1777.1 of the Labor Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 551, as amended, Campos. Public contracts: prevailing wage requirements: violations.

Existing law generally requires that not less than the general prevailing rate of per diem wages, as specified, be paid to workers employed on a public work, as defined. Existing law requires a contractor or subcontractor to submit, to the state or political subdivision on whose behalf a public work is being performed, a penalty of not more than \$50 per calendar day, and not less than \$10 per calendar day, as provided and determined by the Labor Commissioner, for violations of these prevailing wage provisions.

This bill would increase that maximum penalty to \$100 for each calendar day and would increase the minimum penalty to no less than \$40 for each calendar day. The bill would also increase the penalty assessed to contractors and subcontractors with prior violations from \$20 to \$80, and from \$30 to \$120 for willful violations.

Existing law requires each contractor and subcontractor performing work on a public work to keep accurate payroll records regarding his or her employees. Existing law requires that these records contain the information specified by the Division of Labor Standards Enforcement, and provides that a contractor or subcontractor has 10 days in which to

comply after receipt of a written notice requesting the records, or is subject to forfeiting a penalty of \$25 for each calendar day for each worker until strict compliance is effectuated.

This bill would increase the amount of that penalty to \$100 for each calendar day for each worker.

Under existing law, whenever a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be in violation of certain provisions of law relating to payment of prevailing wages, with intent to defraud, or in willful violation of those provisions of law, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible to bid on or to receive a public works contract for specified periods of time.

This bill would revise that provision to instead make a contractor or subcontractor on a public works project that is found to have committed 2 or more separate willful violations within a ~~three-year~~ 3-year period ineligible for a period of up to 3 years to either bid on or be awarded a contract or perform work as a subcontractor of a public works project.

The bill would also require, whenever a contractor or subcontractor performing work on a public works project has failed to provide a timely response to a request by the Division of Apprenticeship Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records, the Labor Commissioner to notify the contractor or subcontractor that he or she will be subject to debarment if the certified payroll records are not produced within 30 days *after receipt of the written notice*, and would make the contractor or subcontractor ineligible to bid on or be awarded a contract or perform work as a subcontractor on a public works project for a period of not less than one year and no more than three years, except as specified.

*Existing law also requires the Labor Commissioner, not less than semiannually, to publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project.*

*This bill would instead require the Labor Commissioner to publish the list described above on the commissioner's Web site, to notify the Contractors' State License Board when the list is updated, and to at least annually notify awarding bodies of the availability of the list of debarred contractors, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1775 of the Labor Code is amended to  
2 read:

3     1775. (a) (1) The contractor and any subcontractor under the  
4 contractor shall, as a penalty to the state or political subdivision  
5 on whose behalf the contract is made or awarded, forfeit not more  
6 than one hundred dollars (\$100) for each calendar day, or portion  
7 thereof, for each worker paid less than the prevailing wage rates  
8 as determined by the director for the work or craft in which the  
9 worker is employed for any public work done under the contract  
10 by the contractor or, except as provided in subdivision (b), by any  
11 subcontractor under the contractor.

12     (2) (A) The amount of the penalty shall be determined by the  
13 Labor Commissioner based on consideration of both of the  
14 following:

15     (i) Whether the failure of the contractor or subcontractor to pay  
16 the correct rate of per diem wages was a good faith mistake and,  
17 if so, the error was promptly and voluntarily corrected when  
18 brought to the attention of the contractor or subcontractor.

19     (ii) Whether the contractor or subcontractor has a prior record  
20 of failing to meet its prevailing wage obligations.

21     (B) (i) The penalty may not be less than forty dollars (\$40) for  
22 each calendar day, or portion thereof, for each worker paid less  
23 than the prevailing wage rate, unless the failure of the contractor  
24 or subcontractor to pay the correct rate of per diem wages was a  
25 good faith mistake and, if so, the error was promptly and  
26 voluntarily corrected when brought to the attention of the contractor  
27 or subcontractor.

28     (ii) The penalty may not be less than eighty dollars (\$80) for  
29 each calendar day, or portion thereof, for each worker paid less  
30 than the prevailing wage rate, if the contractor or subcontractor  
31 has been assessed penalties within the previous three years for  
32 failing to meet its prevailing wage obligations on a separate  
33 contract, unless those penalties were subsequently withdrawn or  
34 overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this ~~Section~~ *section* and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds

1 due the subcontractor for work performed on the public works  
2 project.

3 (4) Prior to making final payment to the subcontractor for work  
4 performed on the public works project, the contractor shall obtain  
5 an affidavit signed under penalty of perjury from the subcontractor  
6 that the subcontractor has paid the specified general prevailing  
7 rate of per diem wages to his or her employees on the public works  
8 project and any amounts due pursuant to Section 1813.

9 (c) The Division of Labor Standards Enforcement shall notify  
10 the contractor on a public works project within 15 days of the  
11 receipt by the Division of Labor Standards Enforcement of a  
12 complaint of the failure of a subcontractor on that public works  
13 project to pay workers the general prevailing rate of per diem  
14 wages.

15 SEC. 2. Section 1776 of the Labor Code is amended to read:

16 1776. (a) Each contractor and subcontractor shall keep accurate  
17 payroll records, showing the name, address, social security number,  
18 work classification, straight time and overtime hours worked each  
19 day and week, and the actual per diem wages paid to each  
20 journeyman, apprentice, worker, or other employee employed by  
21 him or her in connection with the public work. Each payroll record  
22 shall contain or be verified by a written declaration that it is made  
23 under penalty of perjury, stating both of the following:

24 (1) The information contained in the payroll record is true and  
25 correct.

26 (2) The employer has complied with the requirements of  
27 Sections 1771, 1811, and 1815 for any work performed by his or  
28 her employees on the public works project.

29 (b) The payroll records enumerated under subdivision (a) shall  
30 be certified and shall be available for inspection at all reasonable  
31 hours at the principal office of the contractor on the following  
32 basis:

33 (1) A certified copy of an employee's payroll record shall be  
34 made available for inspection or furnished to the employee or his  
35 or her authorized representative on request.

36 (2) A certified copy of all payroll records enumerated in  
37 subdivision (a) shall be made available for inspection or furnished  
38 upon request to a representative of the body awarding the contract,  
39 the Division of Labor Standards Enforcement, and the Division

1 of Apprenticeship Standards of the Department of Industrial  
2 Relations.

3 (3) A certified copy of all payroll records enumerated in  
4 subdivision (a) shall be made available upon request by the public  
5 for inspection or for copies thereof. However, a request by the  
6 public shall be made through either the body awarding the contract,  
7 the Division of Apprenticeship Standards, or the Division of Labor  
8 Standards Enforcement. If the requested payroll records have not  
9 been provided pursuant to paragraph (2), the requesting party shall,  
10 prior to being provided the records, reimburse the costs of  
11 preparation by the contractor, subcontractors, and the entity through  
12 which the request was made. The public may not be given access  
13 to the records at the principal office of the contractor.

14 (c) The certified payroll records shall be on forms provided by  
15 the Division of Labor Standards Enforcement or shall contain the  
16 same information as the forms provided by the division. The  
17 payroll records may consist of printouts of payroll data that are  
18 maintained as computer records, if the printouts contain the same  
19 information as the forms provided by the division and the printouts  
20 are verified in the manner specified in subdivision (a).

21 (d) A contractor or subcontractor shall file a certified copy of  
22 the records enumerated in subdivision (a) with the entity that  
23 requested the records within 10 days after receipt of a written  
24 request.

25 (e) Any copy of records made available for inspection as copies  
26 and furnished upon request to the public or any public agency by  
27 the awarding body, the Division of Apprenticeship Standards, or  
28 the Division of Labor Standards Enforcement shall be marked or  
29 obliterated to prevent disclosure of an individual's name, address,  
30 and social security number. The name and address of the contractor  
31 awarded the contract or the subcontractor performing the contract  
32 shall not be marked or obliterated. Any copy of records made  
33 available for inspection by, or furnished to, a joint  
34 labor-management committee established pursuant to the federal  
35 Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a)  
36 shall be marked or obliterated only to prevent disclosure of an  
37 individual's name and social security number. A joint labor  
38 management committee may maintain an action in a court of  
39 competent jurisdiction against an employer who fails to comply  
40 with Section 1774. The court may award restitution to an employee

1 for unpaid wages and may award the joint labor management  
2 committee reasonable attorney's fees and costs incurred in  
3 maintaining the action. An action under this subdivision may not  
4 be based on the employer's misclassification of the craft of a  
5 worker on its certified payroll records. Nothing in this subdivision  
6 limits any other available remedies for a violation of this chapter.

7 (f) The contractor shall inform the body awarding the contract  
8 of the location of the records enumerated under subdivision (a),  
9 including the street address, city, and county, and shall, within five  
10 working days, provide a notice of a change of location and address.

11 (g) The contractor or subcontractor has 10 days in which to  
12 comply subsequent to receipt of a written notice requesting the  
13 records enumerated in subdivision (a). In the event that the  
14 contractor or subcontractor fails to comply within the 10-day  
15 period, he or she shall, as a penalty to the state or political  
16 subdivision on whose behalf the contract is made or awarded,  
17 forfeit one hundred dollars (\$100) for each calendar day, or portion  
18 thereof, for each worker, until strict compliance is effectuated.  
19 Upon the request of the Division of Apprenticeship Standards or  
20 the Division of Labor Standards Enforcement, these penalties shall  
21 be withheld from progress payments then due. A contractor is not  
22 subject to a penalty assessment pursuant to this section due to the  
23 failure of a subcontractor to comply with this section.

24 (h) The body awarding the contract shall cause to be inserted  
25 in the contract stipulations to effectuate this section.

26 (i) The director shall adopt rules consistent with the California  
27 Public Records Act (Chapter 3.5 (commencing with Section 6250)  
28 of Division 7 of Title 1 of the Government Code) and the  
29 Information Practices Act of 1977 (Title 1.8 (commencing with  
30 Section 1798) of Part 4 of Division 3 of the Civil Code) governing  
31 the release of these records, including the establishment of  
32 reasonable fees to be charged for reproducing copies of records  
33 required by this section.

34 SEC. 3. Section 1777.1 of the Labor Code is amended to read:

35 1777.1. (a) Whenever a contractor or subcontractor performing  
36 a public works project pursuant to this chapter is found by the  
37 Labor Commissioner to be in violation of this chapter with intent  
38 to defraud, except Section 1777.5, the contractor or subcontractor  
39 or a firm, corporation, partnership, or association in which the  
40 contractor or subcontractor has any interest is ineligible for a period

1 of not less than one year or more than three years to do either of  
2 the following:

3 (1) Bid on or be awarded a contract for a public works project.

4 (2) Perform work as a subcontractor on a public works project.

5 (b) Whenever a contractor or subcontractor performing a public  
6 works project pursuant to this chapter is found by the Labor  
7 Commissioner to have committed two or more separate willful  
8 violations of this chapter, except Section ~~1777.5~~, within 1777.5,  
9 *within* a three-year period, the contractor or subcontractor or a  
10 firm, corporation, partnership, or association in which the  
11 contractor or subcontractor has any interest is ineligible for a period  
12 up to three years to do either of the following:

13 (1) Bid on or be awarded a contract for a public works project.

14 (2) Perform work as a subcontractor on a public works project.

15 (c) Whenever a contractor or subcontractor performing a public  
16 works project has failed to provide a timely response to a request  
17 by the Division of Labor Standards Enforcement, the Division of  
18 Apprenticeship Standards, or the awarding body to produce  
19 certified payroll records pursuant to Section 1776, the Labor  
20 Commissioner shall notify the contractor or subcontractor that, in  
21 addition to any other penalties provided by law, the contractor *or*  
22 *subcontractor* will be subject to debarment under this section if  
23 the certified payroll records are not produced within 30 days *after*  
24 *receipt of the written notice*. If the commissioner finds that the  
25 contractor or subcontractor has failed to comply with Section 1776  
26 by that deadline, unless the commissioner finds that the failure to  
27 comply was due to circumstances outside the contractor's or  
28 subcontractor's control, the contractor or subcontractor or a firm,  
29 corporation, partnership, or association in which the contractor or  
30 subcontractor has any interest is ineligible for a period of not less  
31 than one year and not more than three years to do either of the  
32 following:

33 (1) Bid on or be awarded a contract for a public works project.

34 (2) Perform work as a subcontractor on a public works project.

35 (d) A willful violation occurs when the contractor or  
36 subcontractor knew or reasonably should have known of his or  
37 her obligations under the public works law and deliberately fails  
38 or refuses to comply with its provisions.

39 (e) ~~Not less than semiannually, the~~ The Labor Commissioner  
40 shall ~~publish and distribute to awarding bodies on the~~



1 *commissioner's Web site* a list of contractors who are ineligible to  
 2 bid on or be awarded a public works contract, or to perform work  
 3 as a subcontractor on a public works project pursuant to this  
 4 chapter. The list shall contain the name of the contractor, the  
 5 ~~Contractor's~~ *Contractors'* State License Board license number of  
 6 the contractor, and the effective period of debarment of the  
 7 contractor. *Contractors shall be added to the list upon issuance*  
 8 *of a debarment order and the commissioner shall also notify the*  
 9 *Contractors' State License Board when the list is updated. At least*  
 10 *annually, the commissioner shall notify awarding bodies of the*  
 11 *availability of the list of debarred contractors.* The commissioner  
 12 shall also place advertisements in construction industry publications  
 13 targeted to the contractors and subcontractors, chosen by the  
 14 commissioner, that state the effective period of the debarment and  
 15 the reason for debarment. The advertisements shall appear one  
 16 time for each debarment of a contractor in each publication chosen  
 17 by the commissioner. The debarred contractor or subcontractor  
 18 shall be liable to the commissioner for the reasonable cost of the  
 19 advertisements, not to exceed five thousand dollars (\$5,000). The  
 20 amount paid to the commissioner for the advertisements shall be  
 21 credited against the contractor's or subcontractor's obligation to  
 22 pay civil fines or penalties for the same willful violation of this  
 23 chapter.

24 (f) For purposes of this section, "contractor or subcontractor"  
 25 means a firm, corporation, partnership, or association and its  
 26 responsible managing officer, as well as any supervisors, managers,  
 27 and officers found by the Labor Commissioner to be personally  
 28 and substantially responsible for the willful violation of this  
 29 chapter.

30 (g) For the purposes of this section, the term "any interest"  
 31 means an interest in the entity bidding or performing work on the  
 32 public works project, whether as an owner, partner, officer,  
 33 manager, employee, agent, consultant, or representative. "Any  
 34 interest" includes, but is not limited to, all instances where the  
 35 debarred contractor or subcontractor receives payments, whether  
 36 cash or any other form of compensation, from any entity bidding  
 37 or performing work on the public works project, or enters into any  
 38 contracts or agreements with the entity bidding or performing work  
 39 on the public works project for services performed or to be  
 40 performed for contracts that have been or will be assigned or sublet,

- 1 or for vehicles, tools, equipment, or supplies that have been or will  
2 be sold, rented, or leased during the period from the initiation of  
3 the debarment proceedings until the end of the term of the  
4 debarment period. “Any interest” does not include shares held in  
5 a publicly traded corporation if the shares were not received as  
6 compensation after the initiation of debarment from an entity  
7 bidding or performing work on a public works project.
- 8 (h) For the purposes of this section, the term “entity” is defined  
9 as a company, limited liability company, association, partnership,  
10 sole proprietorship, limited liability partnership, corporation,  
11 business trust, or organization.
- 12 (i) The Labor Commissioner shall adopt rules and regulations  
13 for the administration and enforcement of this section.